

1 528.

2 JUDGE SIPPEL: Do you have an

3 objection to it?

4 MR. SCHMIDT: Just the one I've

5 stated, Your Honor.

6 JUDGE SIPPEL: Thank you, sir.

7 Okay. I'm overruling the objection, receiving

8 it into evidence.

9 (WHEREUPON, THE DOCUMENT REFERRED

10 TO, PREVIOUSLY MARKED COMCAST

11 EXHIBIT NO. 528 FOR

12 IDENTIFICATION, WAS RECEIVED IN

13 EVIDENCE.)

14 JUDGE SIPPEL: You may go ahead.

15 BY MR. PEREZ-MARQUES:

16 Q Mr. Furman, I believe you

17 testified that you were not aware that budgets

18 were down at [REDACTED], is that correct?

19 A Correct.

20 Q Does Mr. Pattillo have any special

21 responsibility for [REDACTED] as an accountant?

22 A It falls out of the Chicago

1 office, which at that time he would have had  
2 responsibility for.

3 Q So [REDACTED] was one of his  
4 customers.

5 A The agency responsible for [REDACTED]  
6 [REDACTED] business was his customer.

7 Q The [REDACTED] account was within  
8 his responsibility?

9 A Yes.

10 Q And in this e-mail, he is pointing  
11 out that [REDACTED] budgets are down, correct?

12 A Correct.

13 Q And now Tim Allen responds in the  
14 e-mail above that. What is Tim Allen's  
15 responsibility with respect to [REDACTED]?

16 A He was the sales executive for the  
17 NFL Network and NFL.doc in Chicago.

18 Q And so he also had particular  
19 responsibility for [REDACTED]?

20 A Yes.

21 Q And he writes back, "Not an ideal  
22 with [REDACTED] — not an ideal situation with

1 [REDACTED] overall in the marketplace. I am  
2 hearing that broadcast and cable entertainment  
3 nets were hit hard. Many got shut out after  
4 large budgets in 2006." Do you see that, Mr.  
5 Furman?

6 A I see that.

7 Q And what Mr. Allen is saying is,  
8 as a person responsible for the [REDACTED]  
9 account, that [REDACTED] is cutting advertising  
10 generally in the marketplace, isn't that  
11 right?

12 A That is Mr. Allen's comments here.

13 Q And Mr. Allen, as you just  
14 testified, had particular responsibility for  
15 [REDACTED], is that right?

16 A Yes.

17 Q Did you confer with Mr. Allen  
18 before putting [REDACTED] in your written direct  
19 testimony?

20 A No, I did not.

21 Q Were you aware that broadcast and  
22 cable entertainment networks were also

1 suffering from advertising losses from [REDACTED]

2 [REDACTED]?

3 A Mr. Allen quotes that. That is

4 not something that I am aware of.

5 Q You can put that to one side, Mr.

6 Furman.

7 Now, you don't blame Comcast for

8 [REDACTED] reducing its advertising budget, do

9 you?

10 A No.

11 Q That has nothing to do with

12 Comcast at all.

13 A The advertising budget, no.

14 Q And so if Comcast -- if NFL

15 Network lost advertising dollars because of

16 budget constraints at [REDACTED] that would

17 have nothing to do with Comcast.

18 A Not budget concerns.

19 Q Do you recall a time when [REDACTED]

20 recently turned down ads on NFL Network

21 specifically citing their high price?

22 A I do not.

1           Q    Did you check with Mr. Allen or  
2   Mr. Pattillo or anyone in the Chicago office  
3   who is actually responsible for [REDACTED] about  
4   whether [REDACTED] had been complaining not  
5   about distribution but in fact about the price  
6   of your advertising?

7           A    I did.

8           Q    You did check whether they had  
9   complained about the cost.

10          A    Under a general conversation with  
11   our Chicago office, I discussed [REDACTED]  
12   positioning with us and what we were doing to  
13   try to grow their business and what their  
14   responses would have been.

15          Q    And during that conversation, you  
16   did not become aware that [REDACTED] had  
17   complained about the price of NFL Network  
18   advertising spots.

19          A    I don't remember that.

20               MR. PEREZ-MARQUES: Okay. Your  
21   Honor, if I can, I would like to mark Comcast  
22   Exhibit 527.

1 JUDGE SIPPEL: Well, before you go  
2 there, you have asked him questions on the  
3 first page of 528. You have asked him nothing  
4 on the pages beyond that, am I correct?

5 MR. PEREZ-MARQUES: That is  
6 correct, Your Honor.

7 JUDGE SIPPEL: Well, then, why  
8 don't we just tear off the first page and make  
9 that the exhibit? There is no sense of  
10 putting the other materials in the record that  
11 haven't been used.

12 MR. PEREZ-MARQUES: Your Honor,  
13 that is fine with me, if the NFL has no  
14 objection.

15 JUDGE SIPPEL: It could help NFL.

16 MR. SCHMIDT: Yes, we have no  
17 objection to that practice, Your Honor.

18 JUDGE SIPPEL: All right. We are  
19 going to just tear the first page off, the  
20 first page, and it will be a one-page exhibit,  
21 which is Exhibit 528.

22 MR. PEREZ-MARQUES: Your Honor, if

1 I may, I apologize, but if I -- the second  
2 page of the e-mail is actually a continuation  
3 of the same document. It is part of the same  
4 e-mail chain, so I would ask that those two be  
5 put together.

6 JUDGE SIPPEL: Well, it doesn't  
7 really add -- he hasn't been asked questions  
8 on it, and it really doesn't add anything. I  
9 mean, your point is -- I think you have  
10 established your point in terms of the [REDACTED]  
11 [REDACTED] account, and that they are having -- the  
12 budgets are down. That is really all you are  
13 trying to establish, isn't it?

14 MR. PEREZ-MARQUES: That is  
15 correct, Your Honor. On the second page,  
16 however, it refers to the increase in pricing  
17 from year to year on the [REDACTED] ads.

18 JUDGE SIPPEL: Well, he hasn't  
19 testified to that.

20 MR. PEREZ-MARQUES: No, that's  
21 fine, Your Honor. We have no objection.

22 JUDGE SIPPEL: One page, okay.

1 That's fine. Thank you.

2 Now, you have another document.

3 MR. PEREZ-MARQUES: I do. Comcast

4 Exhibit 527 for identification, Your Honor.

5 JUDGE SIPPEL: Okay. Would you

6 bring it up, please, to the witness, etcetera.

7 Thank you.

8 MR. PEREZ-MARQUES: And on this

9 document also my questions will relate only to

10 the cover e-mail.

11 JUDGE SIPPEL: Well, then, why

12 don't we just -- can I just tear that off and

13 just work with the cover?

14 MR. PEREZ-MARQUES: That is fine,

15 Your Honor. We have no objection to that.

16 JUDGE SIPPEL: This will be marked

17 for identification. It is a -- it is from Tim

18 Allen, sent to Dolores Bellina, etcetera -- I

19 will let you explain -- and it regards [REDACTED]

20 [REDACTED] Need Another Revision." It is identified

21 Comcast Exhibit 527 for identification.

22 (Whereupon, the above-referred to



1 document was marked as Comcast

2 Exhibit No. 527 for

3 identification.)

4 BY MR. PEREZ-MARQUES:

5 Q Mr. Furman, you have already

6 explained who Tim Allen is. Who is Dolores

7 Bellina?

8 A She works for the NFL Media Group.

9 Q In the Chicago office as well?

10 A No. New York.

11 Q And Peter Butchen?

12 A NFL Media Group in New York.

13 Q And you see that this is an e-mail

14 sent from Mr. Allen to Ms. Bellina and Michael

15 Brown on September 11, 2007, correct?

16 A Correct.

17 Q It is the subject line "[REDACTED]"

18 "Need Another Revision," do you see that?

19 A I do.

20 Q The first line of this e-mail

21 says, "[REDACTED]" has chosen not to move forward

22 with the pre-kick units due to high CPM." Do

1     you see where I am reading?

2           A     I do.

3           Q     What are pre-kick units? They are

4     advertising spots, aren't they?

5           A     They are. This e-mail

6     conversation is one that is had hundreds of

7     times over in negotiations for all networks

8     and television advertising. It is the

9     advertisers and the networks determining what

10    the best mix and match of programming is that

11    they can buy.

12                Advertisers generally strive to

13    get the highest-rated program, which generally

14    carries a higher value for it, and it is about

15    how you blend them together. And this e-mail

16    takes us through one of those conversations.

17           Q     Mr. Furman, my question was

18    whether "pre-kick units" refer to advertising

19    spots.

20           A     Yes, they do.

21           Q     And "CPM" refers to the price of

22    those advertising spots, does it not?

1       A    Yes.

2       Q    In this e-mail, Mr. Allen, who as  
3   we established was responsible for the [REDACTED]  
4   [REDACTED] account, is saying that [REDACTED] has  
5   chosen not to buy those advertising spots  
6   because of the high price, is he not?

7       A    Not to buy pre-kick units.

8       Q    That's right.

9       A    Yes.

10      Q    He is not to buy those advertising  
11   spots because of the price, and that is  
12   something that you did not become aware of  
13   during your conversations with Mr. Allen, is  
14   that right?

15      A    Correct.

16      Q    And that is something that is not  
17   reflected in your written direct testimony.

18      A    Correct.

19      Q    You can put that to one side, Mr.  
20   Furman.

21           JUDGE SIPPEL: You're finished  
22   with that one?

1 MR. PEREZ-MARQUES: I am, Your  
2 Honor.

3 JUDGE SIPPEL: Do you want to move  
4 it in?

5 MR. PEREZ-MARQUES: I would like  
6 to move it in, Your Honor.

7 JUDGE SIPPEL: Is there any  
8 objection?

9 MR. SCHMIDT: No objection, Your  
10 Honor.

11 JUDGE SIPPEL: It is received into  
12 evidence as Comcast Exhibit 527.

13 (Whereupon, the above-referred to  
14 document, previously marked as  
15 Comcast Exhibit No. 527 for  
16 identification, was received into  
17 evidence.)

18 Okay. Thank you.

19 BY MR. PEREZ-MARQUES:

20 Q Now, another reason, Mr. Furman,  
21 that you can lose advertising dollars is  
22 because the advertiser chooses to spend its

1 advertiser dollars differently, isn't that

2 right?

3 A Yes.

4 Q They can choose not only to

5 advertise on a different TV network but to

6 shift money from TV advertising to internet

7 advertising or print advertising, isn't that

8 right?

9 A Correct.

10 Q Or out of advertising entirely and

11 spend it in some other marketing effort, isn't

12 that right?

13 A Hope not, but yes.

14 Q But that has happened in fact,

15 hasn't it?

16 A Yes.

17 Q Now, in fact, do you recall that

18 recently [REDACTED] made a decision to cuts its

19 advertising budget and instead spend a

20 significant amount of those dollars on in-

21 store marketing efforts?

22 A I am not aware of that.

1 Q You didn't know that.

2 A I did not.

3 Q So when you were testifying in

4 your written direct about [REDACTED]

5 advertising decision, you were not aware of

6 that consideration.

7 A That was not brought up in our

8 conversations with them.

9 Q And you are only privy to what

10 they told you.

11 A Correct.

12 Q The discussions they had behind

13 the scenes would not be reflected in your

14 testimony.

15 A Correct.

16 Q [REDACTED] had a new Chief Marketing

17 Officer recently, did they not?

18 A I don't know.

19 Q You don't know one way or the

20 other?

21 A I don't know one way or the other.

22 Q Would you agree that when a new

1 Chief Marketing Officer takes over one of  
2 their first considerations is whether they  
3 should continue what the last guy was doing  
4 that got that last guy fired?

5 A I would imagine it is a  
6 consideration, yes.

7 Q In fact, do you recall that you  
8 have stated that precise formulation several  
9 times in your e-mails?

10 A Yes.

11 Q Yes. So it is your point of view  
12 that a new chief marketing officer very well  
13 might be inclined to scrap what was done  
14 before and take a different path.

15 A Yes.

16 Q Okay. And you are aware that both  
17 [REDACTED] and [REDACTED] have had new CMOs in  
18 recent years?

19 A I am aware of [REDACTED], yes.

20 Q Are there other NFL Network  
21 advertisers that also have new chief marketing  
22 officers?

1 A I would imagine so, yes.

2 Q And, obviously, you don't blame

3 Comcast for new chief marketing officers

4 taking over your advertisers, do you?

5 A No.

6 Q Are you familiar with the models

7 that [REDACTED] uses to decide how to spend its

8 advertising dollars?

9 A No.

10 Q Are you aware of their ad

11 optimization program?

12 A I am aware it exists. I am not

13 aware of it specifically.

14 Q Do you know who was involved in

15 managing it or how it is used to decide how to

16 spend [REDACTED] advertising dollars?

17 A No.

18 Q So, again, you are basing your

19 testimony about [REDACTED] based only on what you

20 heard, but you are not privy to what goes on

21 within [REDACTED]

22 A Correct.



1 Q Yesterday an expert called for the  
2 NFL testified that one thing advertisers worry  
3 about is holes in the geographic footprint of  
4 a network, is that correct? Do you agree with  
5 that testimony?

6 A Do I agree that's something that  
7 concerns them?

8 Q Yes.

9 A Yes.

10 Q Okay. Now, what are the -- and  
11 NFL Network has some very significant holes in  
12 its distribution, does it not?

13 A Yes.

14 Q For instance, NFL Network is not  
15 distributed on cable in New York.

16 A Correct.

17 Q And it is not distributed on cable  
18 in Los Angeles, by and large.

19 A Correct.

20 Q And it is not distributed on cable  
21 in Tampa, correct?

22 A I wouldn't know that.

1           Q    Okay. What about in Texas, are  
2   there holes in your cable distribution in  
3   Texas?

4           A    I wouldn't be aware of this.

5           Q    Okay. Well, let's stick with New  
6   York and Los Angeles. Do you agree that those  
7   are holes in the cable distribution of the NFL  
8   Network?

9           A    Cable, yes.

10          Q    Yes. And, in fact, those holes in  
11   your distribution have nothing to do with  
12   Comcast, isn't that right?

13          A    I wouldn't either know or not know  
14   about that.

15          Q    Comcast wouldn't be able to give  
16   you distribution in those places.

17          A    I wouldn't know about that. I  
18   don't know everywhere Comcast has the  
19   availability of distribution.

20          Q    Is it important to your ability to  
21   sell advertising on the NFL Network that you  
22   be reaching the markets where media buyers

1 generally are located?

2 A Yes.

3 Q And what are some of the markets  
4 where media buyers are located?

5 A Chicago, New York, Los Angeles.

6 Those are some of the key ones.

7 MR. PEREZ-MARQUES: Now, I would  
8 like to mark for identification Comcast  
9 Exhibit 522.

10 JUDGE SIPPEL: Pass it up to the  
11 witness and myself, and let's see what we  
12 have. Is this the first time we have seen  
13 this?

14 MR. PEREZ-MARQUES: Yes, it is,  
15 Your Honor.

16 JUDGE SIPPEL: When we mark this  
17 for identification, how would you want to  
18 describe it? Because I'm kind of at sea with  
19 this one.

20 MR. PEREZ-MARQUES: Your Honor, it  
21 appears to be a slide deck. I can represent  
22 that based on the information provided by NFL

1 it is from Mr. Furman's custodial file, and it  
2 is -- appears to be a draft presentation or a  
3 final presentation regarding the NFL's media  
4 sales.

5 JUDGE SIPPEL: Very well. And  
6 what year would that be in?

7 MR. PEREZ-MARQUES: It is at least  
8 -- it is later than May 25, 2008, but beyond  
9 that it is not dated. I would ask the witness  
10 to do that.

11 JUDGE SIPPEL: And what month  
12 would it be? You said that --

13 MR. PEREZ-MARQUES: It contains  
14 data through May 25, 2008.

15 JUDGE SIPPEL: Okay. So circa May  
16 2008. And that is identified as Comcast  
17 Exhibit 522 for identification. Thank you.

18 (Whereupon, the above-referred to  
19 document was marked as Comcast  
20 Exhibit No. 522 for  
21 identification.)

22 MR. PEREZ-MARQUES: Thank you,

1 Your Honor.

2 BY MR. PEREZ-MARQUES:

3 Q Mr. Furman, do you recognize this  
4 presentation?

5 A Generally.

6 Q What do you generally recognize it  
7 to be?

8 A A presentation that outlines at  
9 some point in time key sales strategies and  
10 information that we would pass to our sales  
11 team.

12 Q Your sales team being your media  
13 sales team?

14 A Media sales team, yes.

15 Q So you are updating them on the  
16 state of the advertising sales business?

17 A Or discussing things that -- yes,  
18 updating them, that's correct.

19 Q Now, Mr. Furman, I would like to  
20 direct you to page 6 of the presentation,  
21 which is numbered -- Bates numbered ending in  
22 7023. Do you see that page?

1       A    I do.

2       Q    Do you see that the headline is  
3    "More Sizzle, Less Steak." Do you see that?

4       A    Yes.

5       Q    What does "less steak" refer to?

6       A    I can -- I don't know where this  
7    was created.

8       Q    Did you write these words?

9       A    I don't know. I don't recall.

10      Q    Now, you see on this slide it says  
11    "More Sizzle, Less Steak," and then it has a  
12    list of three networks, and then the hours of  
13    original or first-run programming on those  
14    networks, and then the percentage of total  
15    hours that that programming represents, isn't  
16    that right?

17      A    Yes.

18      Q    And the NFL Network is shown as  
19    having only 17 percent of its total hours  
20    being original or first run, isn't that right?

21      A    According to this, yes.

22      Q    Yes. Do you have any reason to

1     dispute that figure?

2           A    I don't know where these were

3     taken from, but I will take what's on here.

4           Q    Well, I can represent to you that

5     the presentation was taken from your files.

6           A    I have many presentations that I

7     keep in my files.

8           Q    But you don't dispute this 17

9     percent figure.

10          A    I don't dispute it is on the page.

11     I don't know if it is, in fact, correct, and

12     I don't know what time of the -- what year it

13     is talking about.

14          Q    Now, the remainder of the

15     programming, other than original or first run,

16     would be what, reruns?

17          A    Not necessarily. It could be --

18     it could be reruns of programming that we may

19     have gotten from some of our partners. It

20     could be NFL films, highlight films, that we

21     don't consider to be first run for time --

22     because of time out, classic games, things of

1 that nature. Generally, we refer, when we  
2 talk internally about first run, to have a  
3 broad group of programs that fit into that.

4 Q Okay. So but 83 percent of the  
5 programming, if this number is correct, on the  
6 NFL Network would be content that is neither  
7 original nor first run, correct?

8 A Correct.

9 Q And that is what "less steak"  
10 refers to, isn't it? There is less original  
11 content, there is less meat on the network.

12 A Yes.

13 Q And what is the "more sizzle"?

14 A I would imagine that that is  
15 programming content, the type of programming  
16 that the NFL Network carries.

17 Q And when it says "less steak,"  
18 that is less steak than who?

19 A I would imagine our number one  
20 competitor. Generally, when we speak of ESPN  
21 and ESPN 2, we look to them as the apex  
22 competitors.



1 Q Okay. So it is meaning less steak  
2 than ESPN, is that right?

3 A Yes.

4 Q And doesn't, in fact, the "more  
5 sizzle" refer to the high price?

6 A I wouldn't agree to that.

7 Q But what the customers are buying  
8 isn't the sizzle, right, it's the steak?

9 A I would neither agree nor disagree  
10 to that either.

11 Q And when you go to a restaurant,  
12 what you actually can eat is the meat.

13 A How a person talks about the  
14 quality of programming and using this jargon  
15 is not what you are I believe asking me, which  
16 is the quality of programming on any network  
17 that they run, is about the popularity of the  
18 programming. So programming varies in  
19 ratings, and it varies in popularity, and it  
20 also varies on whether it has been seen once  
21 or twice.

22 Some networks, including ours,